

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CHRISTOPHER JOSE CISNEROS,)	CIV. NO. 18-00244 SOM-RLP
)	CR. NO. 99-00107 SOM
Petitioner,)	
)	ORDER REFERRING TO THE NINTH
vs.)	CIRCUIT DEFENDANT CHRISTOPHER
)	JOSE CISNEROS'S FOURTH MOTION
UNITED STATES OF AMERICA,)	UNDER 28 U.S.C. § 2255 TO
)	VACATE, SET ASIDE, OR CORRECT
Respondent.)	SENTENCE; EXHIBIT A
)	

**ORDER REFERRING TO THE NINTH CIRCUIT DEFENDANT CHRISTOPHER JOSE
CISNEROS'S FOURTH MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET
ASIDE, OR CORRECT SENTENCE; EXHIBIT A**

Defendant Christopher Jose Cisneros was convicted of drug-related crimes in 1999. He was sentenced the following year to a life sentence as required by statute. In 2002, Cisneros filed his first motion seeking relief under 28 U.S.C. § 2255, which was denied the same year. See ECF Nos. 64 and 70. In 2008, Cisneros filed a Petition for Writ of Audita Querela, which was also denied the same year. See ECF Nos. 78 and 82.

On June 27, 2016, Cisneros filed a second motion seeking relief under 28 U.S.C. § 2255. The court referred that motion to the Ninth Circuit for its determination as to whether to certify Cisneros's second motion. See ECF No. 86. On May 30, 2017, the Ninth Circuit declined to certify the second § 2255 motion. See ECF No. 88.

On June 5, 2017, Cisneros filed a third motion seeking relief under 28 U.S.C. § 2255. See ECF No. 89. The court again referred the motion to the Ninth Circuit. See ECF No. 90.

On June 21, 2018, Cisneros filed a document he called "Notice of Appeal Pursuant to 28 USCS 2255(e)." See ECF No. 91. That document states that Cisneros desires to appeal his sentence and conviction based on newly discovered evidence and a new Supreme Court ruling. Although called a "notice of appeal," the document appears to be a fourth motion seeking relief under 28 U.S.C. § 2255. The court again refers the motion to the Ninth Circuit, as there are "significant limitations on the power of federal courts to award relief to prisoners who file 'second or successive' habeas petitions." *United States v. Lopez*, 577 F.3d 1053, 1059 (9th Cir. 2009). In 28 U.S.C. § 2255(h), Congress said:

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

The Ninth Circuit has defined this limitation as jurisdictional in nature. Thus, in *Ezell v. United States*, 778

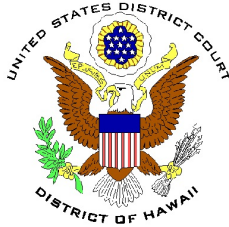
F.3d 762 (9th Cir. 2015), the Ninth Circuit said, "Section 2255(h)(2) creates a jurisdictional bar to the petitioner's claims: 'If the petitioner does not first obtain our authorization, the district court lacks jurisdiction to consider the second or successive application.'" *Id.* at 765 (quoting *United States v. Lopez*, 577 F.3d 1053, 1061 (9th Cir. 2009)).

Because Cisneros's fourth or successive § 2255 motion lacks the necessary certification under § 2255(h), the court refers it to the Ninth Circuit Court of Appeals in accordance with Circuit Rule 22-3(a), which states, "If a second or successive petition or motion, or an application for authorization to file such a petition or motion, is mistakenly submitted to the district court, the district court shall refer it to the court of appeals."

The Clerk of Court is directed to transmit this order with a copy of Cisneros's fourth § 2255 motion attached as Exhibit A to the Ninth Circuit. This order is to be served on Cisneros and Kenneth M. Sorenson, Assistant United States Attorney. The Clerk of Court is further directed to terminate any motion left pending and to close Civil No. 18-00244 SOM-RLP.

IT IS SO ORDERED.

Dated: Honolulu, Hawaii, June 22, 2018.



/s/ Susan Oki Mollway
Susan Oki Mollway
United States District Judge

Cisneros v. United States, Crim No. 99-00107 SOM and Civ. No. 18-00244 SOM-RLP; ORDER REFERRING TO THE NINTH CIRCUIT DEFENDANT CHRISTOPHER JOSE CISNEROS'S FOURTH MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE; EXHIBIT A